



# UNITED STATES PATENT AND TRADEMARK OFFICE

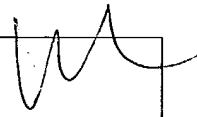
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*[Handwritten signature]*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,412	07/08/2003	Alan R. Atemboski	243148001US3	9294
25096	7590	09/29/2004	EXAMINER	
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			YEUNG, JAMES C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/616,412	<b>Applicant(s)</b> ATEMBOSKI ET AL. 	
	<b>Examiner</b> James C Yeung	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 46-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46-86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Double Patenting***

1. Claims 46-86 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,602,068. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application differ from those U.S. Pat. 6,602,068 primarily on the basis of an obvious variation in scope. Claims 46-86 of the present application are of broader scope than the claims of U.S. Pat. No. 6,602,068. Thus, claims 46-86 are obviously readable on claims 1-30 of U.S. Pat. No. 6,602,068.

### ***Claim Rejections - 35 USC § 112***

2. Claims 64-69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 64, there is no proper antecedent basis for "the burner pan" in line 7.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3749

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '073 in view of Shimek '743.

Shimek '073 discloses the invention substantially as claimed. However, Shimek '073 does not disclose first and second recessed gas distribution chamber portions.

Shimek '743 teaches the use of a burner body comprising first and second recessed gas distribution chamber portions (13, Fig. 9) for the purpose of controlling the distribution of fuel gas through the interior of the burner body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the burner body of Shimek '073 with first and second recessed gas distribution chamber portions in the manner as taught by Shimek '743 in order to control the distribution of fuel gas through the burner body.

5. Claims 50-54, 70-71, 73-75, 77-78, 80-81, and 83-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '743 in view of either Shimek '575 or Butler.

Shimek '743 discloses the invention substantially as claimed. However, Shimek '743 does not disclose a contoured surface with a plurality of peaks and valleys.

Art Unit: 3749

Shimek '575 teaches the use of a hollowed flat pan burner comprising a contoured surface with a plurality of peaks and valleys for the purpose of simulating a plurality of simulated coal members arranged in a simulated ember bed (col. 4, lines 34-39).

Butler teaches the use of a hollowed flat pan burner (24A, Fig. 3A) comprising a contoured surface with a plurality of peaks and valleys for the purpose of simulating a plurality of simulated coal members arranged in a simulated ember bed (col. 4, lines 14-21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the burner body of Shimek '743 with a contoured surface with a plurality of peaks and valleys in order to simulate a plurality of simulated coal members arranged in a simulate ember bed in view of the teaching of either Shimek '575 or Butler.

6. Claims 64-69 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claims 72, 79, and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Each of Whitaker and Wright is cited to show a burner assembly for a gas-burning fireplace.

Art Unit: 3749

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C Yeung whose telephone number is 703 308-1047. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JY  
September 25, 2004

  
James C. Yeung  
Primary Examiner